

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF ALABAMA  
NORTHERN DIVISION

PROGRESSIVE SPECIALTY	)	
INSURANCE COMPANY,	)	
	)	
Plaintiff,	)	
	)	
v.	)	CIVIL ACTION NO: 2:06-CV-336-MHT
	)	
DARRYL D. FINCH, et al.,	)	
	)	
Defendants.	)	

**STATEMENT OF UNDISPUTED FACTS**

Comes now the plaintiff, Progressive Specialty Insurance Company ("Progressive"), pursuant to Rule 56 of the Federal Rules of Civil Procedure, and submits the following undisputed facts in support of its motion for summary judgment:

1. Bernard Washington ("Washington") was injured in an accident on February 13, 2004 while driving a truck owned by Finch Enterprises, Inc. ("Finch Enterprises"). (See Complaint p. 2, ¶ 6; Finch Admissions ¶ 2, attached hereto as exhibit "A").

2. Progressive issued a policy of commercial auto insurance to Finch Enterprises which was in full force and effect at the time of this February 13, 2004 accident. (See Policy, attached hereto as exhibit "B"; Finch Admissions ¶ 1, attached hereto as exhibit "A").

3. The policy excluded coverage for bodily injury to employees of Finch Enterprises. (See Policy pp. 11, 12 and 15, attached hereto as exhibit "B"; Finch Admissions ¶ 4, attached hereto as exhibit "A").

4. Washington was an employee of Finch Enterprises at the time of the accident. (See Finch Admissions ¶ 5, attached hereto as exhibit "A").

5. The policy further excluded liability coverage for bodily injury to any person driving an insured auto with the permission of the owner. (See Finch Admissions ¶ 6, attached hereto as exhibit "A"; Policy pp. 10 and 15, attached hereto as exhibit "B").

6. Washington was injured while driving Finch Enterprises' insured auto with its permission. (See Finch Admissions ¶ 7, attached hereto as exhibit "A").

7. Washington made a liability claim against Finch Enterprises and Finch for his injuries in the accident. (See Finch Admissions ¶ 3, attached hereto as exhibit "A").

8. Finch Enterprises and Finch are not entitled to liability coverage for any injury claims asserted against them by Washington. (See Finch Admissions ¶ 8; attached hereto as exhibit "A").

9. Progressive filed this declaratory judgment action on April 11, 2004, requesting that the court "[D]eclare that the Progressive policy does not provide coverage for Finch and Finch Enterprises for any claims against them by Washington." (See Complaint p. 6, ¶ A).

10. Progressive filed a request for admissions to Finch Enterprises and Finch on December 4, 2006. (See Finch Admissions, attached hereto as exhibit "A").

11. Finch Enterprises and Finch failed to timely respond to Progressive's request for admissions; therefore, Progressive filed a motion to deem facts admitted on January 24, 2007.

12. The court entered an order on January 24, 2007 requiring that Finch Enterprises and Finch “show cause why [Progressive’s motion to deem facts admitted] should not be granted on or before February 19, 2007.” (Order, January 24, 2007).

13. Finch Enterprises and Finch failed to timely respond to the court’s order; therefore, the court entered an order granting Progressive’s motion to deem facts admitted on February 26, 2007. The order states that “each request for admission filed by Plaintiff Progressive Specialty Insurance Company to Defendants Darryl D. Finch and Darryl D. Finch Enterprises is hereby deemed admitted.” (Order, February 26, 2007).

/s/ R. Larry Bradford

R. Larry Bradford, Attorney for Plaintiff,  
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**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the above and foregoing has been served upon the following via electronic filing on this 23rd day of March, 2007.

Mr. Darryl D. Finch  
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